

**REMARKS:**

Claims 1, 3-9, and 11-16 are presented for examination. Claims 1, 6, 9 and 14 have been amended hereby. Claims 2 and 10 have previously been cancelled, without prejudice or disclaimer.

Reconsideration is respectfully requested of the rejection of claim 1 under 35 U.S.C. 112, second paragraph.

It is respectfully submitted that applicants do not concur with the Examiner in the Examiner's analysis of this claim in view of 35 U.S.C. 112, second paragraph.

The Examiner states at page 5 of the March 12, 2008 Office Action that "however the Earnings Per Share formula below [that is, the EPS formula in claim 1] does not contain any variable which is associated with a price of a stock. Therefore, it is unclear how a change in stock price can change the earnings per share (EPS) using the formula above [that is, the EPS formula in claim 1].

In response, applicants note that the formula in claim 1 includes the variable  $\Delta N_{\text{eff}}$ , which equals the change in the effective number of common shares outstanding.

Applicants further note that claim 1 explicitly recites that the "change in the effective number of common shares outstanding reflects the possibility, based upon an economically reasonable analysis in light of market conditions including a value of a stock price associated with the entity, of conversion of a convertible security" (emphasis added).

Thus, in light of such a connection (based on an economically reasonable analysis) between stock price and effective number of common shares outstanding, it is respectfully submitted that a change in stock price can clearly affect the effective number of common shares outstanding.

Moreover, it is noted that the Examiner states at page 3 of the March 12, 2008 Office Action that "Applicant attempts to link  $\Delta N_{\text{eff}}$  with a stock price, however it is not clear as to what that relationship is. It is not clear how  $\Delta N_{\text{eff}}$  changes in relation with a stock price or vice versa."

As mentioned above, the relationship between stock price and effective number of common shares outstanding is based upon an economically reasonable analysis in light of market conditions.

To give a concrete example of how  $\Delta N_{\text{eff}}$  may change relative to a stock price based upon an economically reasonable analysis in light of market conditions, applicants respectfully request that the Examiner consider the following scenario number 1:

- Current stock price = \$100
- Convertible security conversion price = \$40
- Based upon an economically reasonable analysis in light of market conditions  $\Delta N_{\text{eff}}$  will likely increase by the total number of shares into which the convertible security can be converted

To give another concrete example of how  $\Delta N_{\text{eff}}$  may change relative to a stock price based upon an economically reasonable analysis in light of market conditions, applicants respectfully request that the Examiner consider the following scenario number 2:

- Current stock price = \$10
- Convertible security conversion price = \$40
- Based upon an economically reasonable analysis in light of market conditions  $\Delta N_{\text{eff}}$  will likely not increase

Of course, these are only two examples – other economically reasonable factors such as, for example, payment of dividends may come into play.

Therefore, it is respectfully submitted that the rejection of claim 1 under 35 U.S.C. 112, second paragraph, has been overcome.

Reconsideration is respectfully requested of the rejection of claim 9 under 35 U.S.C. 112, second paragraph.

It is respectfully submitted that applicants do not concur with the Examiner in the Examiner's analysis of the claims in view of 35 U.S.C. 112, second paragraph.

The Examiner states at page 5 of the March 12, 2008 Office Action that "However the Earnings Per Share formula:  $\text{EPS} = \text{dividend per share} + \text{retained EPS}$  does not contain any variable which is associated with a price of a stock. Therefore, it is unclear how a change in stock price can change the earnings per share (EPS) using the formula above."

In response (and in a manner similar to that discussed above with regard to claim

1), applicants note first that the formula in claim 9 (i.e.,  $EPS = \text{dividend per share} + \text{retained EPS}$ ) varies based upon the fact the claim specifically recites “wherein retained  $EPS = (\text{earnings without taking effect of any interest expense from the convertible security minus attributed after-tax interest expense from the convertible security}) / (\text{the number of existing shares} + \text{the number of attributed shares from the convertible security})$ ” (emphasis added). That is, the retained EPS variable of the formula varies (at least in part) based upon the number of attributed shares from the convertible security.

Further, it is noted that this claim 9 explicitly recites that the “number of attributed shares reflects the possibility, based upon an economically reasonable analysis in light of market conditions including a value of a stock price associated with the entity, of conversion of the convertible security.”

Thus, in light of such a connection (based on an economically reasonable analysis) between stock price and number of attributed shares, it is respectfully submitted that a change in stock price can clearly affect the number of attributed shares (which, as mentioned above, explicitly affects the EPS formula).

To give a concrete example of how the number of attributed shares may change relative to a stock price based upon an economically reasonable analysis in light of market conditions, applicants respectfully request that the Examiner consider the following scenario number 1:

- Current stock price = \$100
- Convertible security conversion price = \$40
- Based upon an economically reasonable analysis in light of market conditions the number of attributed shares will likely increase by the total number of shares into which the convertible security can be converted

To give another concrete example of how the number of attributed shares may change relative to a stock price based upon an economically reasonable analysis in light of market conditions, applicants respectfully request that the Examiner consider the following scenario number 2:

- Current stock price = \$10

- Convertible security conversion price = \$40
- Based upon an economically reasonable analysis in light of market conditions the number of attributed shares will likely not increase

Of course, these are only two examples – other economically reasonable factors such as, for example, payment of dividends may come into play.

Therefore, it is respectfully submitted that the rejection of claim 9 under 35 U.S.C. 112, second paragraph, has been overcome.

Reconsideration is respectfully requested of the rejection of claims 1, 3-9 and 11-16 under 35 U.S.C. 103(a) as allegedly being unpatentable over *Intermediate Accounting*, 5<sup>th</sup> Edition, hereinafter “Nikolai et al.”.

It is respectfully submitted that applicants do not concur with the Examiner in the Examiner’s analysis of the claims of the present application and the Nikolai et al. reference.

In this regard, it is noted that independent claim 1 recites, *inter alia*, the following:

- “iteratively calculating, with the computer system, a plurality of values of earnings per share associated with the entity based upon the obtained data and by iteratively changing the value of the stock price associated with the entity, wherein each value of earnings per share is calculated at least in part using the formula:

$$EPS = DPS_0 + \frac{Earnings_0 - N_o \times DPS_0 - Coupon}{N_o + \Delta N_{eff}}, \text{ (emphasis added)}$$

Similarly, it is noted that independent claim 9 recites, *inter alia*, the following:

- “iteratively calculating, with the computer system, a plurality of values of earnings per share associated with the entity based upon the obtained data, wherein each value of earnings per share is calculated at least in part using the formula: *EPS = dividend per share + retained EPS*”

- “wherein the iterative calculating the plurality of values of earnings per share is carried out by iteratively changing at least the value of the stock price associated with the entity” (emphasis added)

As seen from the above, the iterative calculation produces a plurality of values of earnings per share and is based upon (among other things) an iteratively changing value of the stock price.

Nikolai et al. has been reviewed, and as best understood, this reference does not teach, show or even suggest (in the case of claim 1) “iteratively calculating ... a plurality of values of earnings per share associated with the entity based upon the obtained data and by iteratively changing the value of the stock price associated with the entity...” (emphasis added).

Similarly, as best understood, this reference does not teach, show or even suggest (in the case of claim 9) “wherein the iterative calculating the plurality of values of earnings per share is carried out by iteratively changing at least the value of the stock price associated with the entity” (emphasis added).

**In this regard, and with reference to the Examiner’s comments at page 3 of the March 12, 2008 Office Action (where the Examiner directed attention to page 1200 of Nikolai et al.), it is respectfully submitted that this portion of Nikolai et al. (to the extent that an iterative process is discussed) appears to relate to a process of stepping through a calculation for each security in rank order (and not to iteratively changing the value of the stock price associated with the entity).**

More particularly, see Nikolai et al. at page 1200, first full paragraph:

Finally, each convertible security is included in fully diluted earnings per share in sequential order based on the fully diluted ranking. This procedure is identical to that described for primary earnings per share. Beginning with the convertible security at the top of the ranking, (that is, the one with the lowest numerical value impact), a new numerator and denominator are computed by adding the changes resulting from the assumed conversion to the numerator and denominator used to compute the initial tentative fully diluted earnings per share (including options and

warrants). The iterative process is continued until the tentative fully diluted earnings per share is less than the numerical value impact of the next convertible security on the ranking. The remaining securities in the ranking are antidilutive and are not included in the fully diluted earnings per share. The last tentative figure is the fully diluted earnings per share. It contains all the dilutive convertible securities included in the tentative calculations<sup>20</sup> (emphasis added).

Moreover, it is respectfully submitted that by teaching use of either an average market price of a common stock during a period to compute earnings per share or an end of the period market price of a common stock during a period to compute earnings per share, the Nikolai et al. reference actually teaches away from the claimed feature directed to calculating a plurality of values of earnings per share based upon (among other things) an iteratively changing value of the stock price.

In this regard, the Examiner's attention is directed to Nikolai et al. at page 1199, lines 8-14:

If the average market price during the period is the same as or higher than the ending market price, the incremental shares for fully diluted earnings per share are the same as those used in computing primary earnings per share. However, if the end-of-the-period market price of the common stock is higher than the average market price during the period, this ending market price must be used in the treasury stock method to determine the assumed number of common shares reacquired with the proceeds from the assumed option exercise. (italic and bold emphasis removed from the original; underlined emphasis added)

In addition, it is noted that independent claim 1 recites both of the following:

- “iteratively calculating, with the computer system, a plurality of values of earnings per share associated with the entity based upon the obtained data and by iteratively changing the value of the stock price associated with the entity, wherein each value of earnings per share is calculated at least in part using the formula...” (emphasis added)

- “iteratively calculating, with the computer system, a plurality of values of earnings per share risk associated with the entity based upon at least a plurality of different numbers of shares outstanding” (emphasis added)

Similarly, it is noted that independent claim 9 recites both of the following:

- “iteratively calculating, with the computer system, a plurality of values of earnings per share associated with the entity based upon the obtained data, wherein each value of earnings per share is calculated at least in part using the formula...” (emphasis added)
- “iteratively calculating, with the computer system, a plurality of values of earnings per share risk associated with the entity based upon at least a plurality of different numbers of shares outstanding” (emphasis added)

As seen from the above, each of these two pending independent claims recites calculating both a plurality of values of earnings per share and a plurality of values of earnings per share risk (see, e.g., pages 13-23 and Tables 1-5 for examples related to earnings per share risk).

**In this regard, Nikolai et al. has been reviewed, and it is unclear where the Examiner believes that such disclosure related to calculating both a plurality of values of earnings per share and a plurality of values of earnings per share risk may be found.**

**If the Examiner does believe that this reference discloses such calculating both a plurality of values of earnings per share and a plurality of values of earnings per share risk, it is respectfully requested that the Examiner point out specifically where he believes the disclosure may be found so that applicants may respond to the Examiner’s position.**

Therefore, it is respectfully submitted that the rejection of claims 1, 3-9 and 11-16

under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. has been overcome.

Accordingly, it is respectfully submitted that each rejection raised by the Examiner in the March 12, 2008 Office Action has been overcome and that the above-identified application is now in condition for allowance.

Finally, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

For example, support for the amendment to claims 1 and 9 regarding obtaining at and calculating with the computer system may be found in claims 1 and 9, as filed; at page 7, lines 3-20; page 8, lines 13-31; and at page 59, lines 11-28.

Further, support for the amendment to claim 1 regarding iteratively changing the value of the stock price associated with the entity may be found in claims 1 and 2, as filed; and at page 7, lines 21-25.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,  
GREENBERG TRAURIG, LLP

Dated: August 12, 2008

By: /Matthew B. Tropper/  
Matthew B. Tropper  
Registration No. 37,457

Mailing Address:  
GREENBERG TRAURIG, LLP  
MetLife Building  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 801-2100  
Facsimile: (212) 801-6400